

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

THOMAS LEE FERNANDEZ	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-248
TDCJ TRANSPORTATION, ET AL.	§	

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Thomas Lee Fernandez, a prisoner previously confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against members of the TDCJ Transportation security staff, Officer Hancock, an unknown female correctional officer, and unknown members of the medical staff at the Stiles Unit.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

Plaintiff contends that discovery would allow him to produce evidence in support of his claims and to identify the defendants. The Magistrate Judge accepted plaintiff's allegations as true, but found that they did not state a claim upon which relief may be granted. Therefore, discovery would not change the outcome in this case. Plaintiff disagrees with his medical treatment, but a disagreement over his diagnosis or treatment does not amount to a constitutional violation. *Stewart v. Murphy*, 174 F.3d 530, 537 (5th Cir. 1999); *Norton v. Dimazana*, 122 F.3d 286, 292 (5th Cir. 1997). Further, even if the defendants were negligent in treating plaintiff, allegations of negligence or medical malpractice do not state a claim under the Eighth Amendment. *Hall v. Thomas*, 190 F.3d 693, 697 (5th Cir. 1999).

Plaintiff has not shown that the defendants were deliberately indifferent to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). As a result, the Magistrate Judge correctly concluded that this action should be dismissed as frivolous and for failure to state a claim upon which relief may be granted.

ORDER

Accordingly, plaintiff's objections (document no. 18) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 15) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So Ordered and Signed

Dec 29, 2017



Ron Clark, United States District Judge